

21-5126
No. _____

ORIGINAL

IN THE SUPREME COURT
OF THE UNITED STATES OF AMERICA

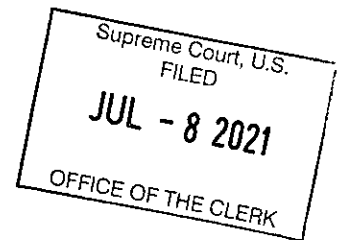
Kevin Tyrell Beach

Petitioner,

vs.

State of Florida,

Respondent.



On Petition for a Writ of Certiorari to
the Supreme Court of Florida

PETITION FOR WRIT OF CERTIORARI
AND
ANY OTHER RELIEF DEEMED NECESSARY AND PROPER

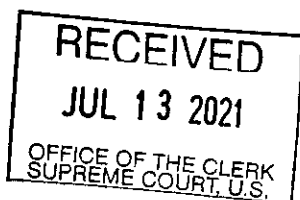
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Petitioner

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Other Involved Parties to Proceedings: Fred Seraphin, Lisa Stewart, Harold Pryor, Kathleen Rubio, Jonathan David Gerber, Burton Cornell Conner, Edward L. Artau, Jorge Labarga, Charles Alan Lawson, Carlos Genaro Muniz, John Daniel Couriel, Jamie Rutland Grosshans.

Questions Presented

1. Does it constitute "*bad faith conduct*" of "*abuse of discretion*" when a judge denies a defendant's numerous pre-trial requests for "stand-by" counsel, in which, the denials later becomes the result of a mistrial when a defendant invokes his constitutional "right to counsel" during trial (especially if there are other alternatives available other than declaring a mistrial)?
2. If an indigent "pro se" defendant invokes his right to counsel after a jury is sworn in and impaneled, can a judge or prosecutor initiate crucial confrontation with a defendant (to obtain consent for a mistrial), outside the presence of an attorney?
3. Can a layman, pro se defendant legally consent to a mistrial without a court first "laying a record" inquiry to demonstrate that consent was unequivocally, intelligently and voluntarily made?
4. Is a defendant federally protected by his double jeopardy rights when a state trial court or plaintiff (*the State*) **fails** to demonstrate a manifest injustice or legal consent adequately on the record before a declaration of a mistrial?
5. Is a defendant federally protected when a state court violates his state and federal constitutional rights, such as a double jeopardy violation, and does this constitutional violation create irreparable harm, or departs from the essential requirements of law?
6. Can a State district court of appeals dismiss or deny a defendant access of justice by dismissing a claim of irreparable harm in a writ of prohibition, and are there sanctions or incentives for them to comply swiftly?
7. Does a State court have jurisdiction to proceed on a case that is federally prohibited by a double jeopardy prohibition bar?
8. Can claims of irreparable harm be remedied on direct appeal? If a state district court of appeals dismisses a petitioner's "writ of prohibition" after claims and an adequate showing of a double jeopardy violation, and are those claims federally protected?
9. Is a defendant required to exhaust all state remedies just to receive protection from a federal double jeopardy prohibition bar?

10. What **immediate** relief is a defendant entitled to (specifically a defendant who cannot afford an attorney and his court appointed attorney has refused to address those issues, and a defendant that may not be intelligent in expert capacity to adequately provide notice to a court)?
11. Can a federal court provide a remedy to make it easy for pro se, layman defendants to present these issues by filling out a "ready-made" "qualifying" paper document (form) to address these issues **without** it being stricken as "hybrid representation" (*If a defendant is deprived of life, liberty, or property because he is denied a federally protected constitutional right --such as a double jeopardy violation*)?
12. When adequate and immediate relief cannot be obtained swiftly in any form or by any other state court-- under what circumstances does a defendant's double jeopardy rights become invoked, what automatic, prompt, or legal vehicle/remedy is available for a defendant, and can a defendant adequately discharge himself from a case upon a clear and adequate showing of a federally protected constitutional right such as a double jeopardy violation? What is the proper **immediate** vehicle available to obtain prompt relief of a violated constitutional right?
13. Will it constitute "abuse of discretion" to deny a petitioner's meritorious and valid writ when there is no other available remedy to relieve irreparable harm in violation of a constitutional right (In both federal and State law)?
14. If a defendant is deprived of life, liberty, or property because he is denied valid double jeopardy protection, Will this deprivation essentially also violate his due process rights?
15. Can a State Supreme Court make a ruling that dramatically contradicts its prior opinions, rulings, and State Constitution; does their contradictory rulings violate federal law when it impedes on a petitioner/defendants constitutional rights (*such as a double jeopardy violation*)?

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgement is the subject of this petition is as follows:

Fred Seraphin, Lisa Stewart, Harold Pryor, Erica Arboleya, John William Resnik III, Jonathan David Gerber, Burton Cornell Conner, Edward L Artau, Jorge Labarga, Charles Alan Lawson, Carlos Genaro Muniz, John Daniel Couriel, Jamie Rutland Grosshans.

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C. STATEMENT OF JURISDICTION

In reliance on Article III, Section 2, of the U.S Constitution, which grants the Supreme Court jurisdiction in “all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority.” Therefore, under its language, all cases arising under federal law are within its grant of appellate jurisdiction. That conclusion is reinforced by the Supremacy Clause of Article VI, which makes federal law superior to state law. State court decisions involving federal law are reviewable by the federal courts. There are simply no further steps that can be taken in the state courts to provide relief and avoid the trial the defendant maintains is barred by the Fifth Amendment's guarantee.

The Florida Supreme Court, hereinafter FSC, have entered its judgement on May 6th, 2021 in case no. SC21-515 (see: **Appendix 1a**). The Florida Supreme Court has apparently refused to review the petitioner's Writ of Certiorari and has erroneously treated the petitioner's writ of certiorari as a “Writ of Mandamus”. The Florida Supreme Court has erroneously dismissed the petitioner's writ of certiorari, refused to provide relief, and refused to entertain a rehearing or reinstatement on the cause. The Florida Supreme Court judgement clearly goes against the petitioner's federally protected constitutional rights, creating irreparable harm and

departs from the essential requirements of law. The Florida Supreme Court is a “state court” of last resort that apparently decided an important federal question that conflicts with the federal constitution, the state’s constitution, and its own prior decisions of authority. The Florida Supreme Court’s decision questions the validity of a properly invoked double jeopardy prohibition and its petitioner’s rights for protection. The Florida Supreme Court’s decision inflicts irreparable harm onto the petitioner, deprives him of his state and federal constitutional rights and denies him access to the courts for relief and justice.

The Florida Supreme Court erroneous decision invokes jurisdiction of this court pursuant to 28 U.S.C. § 1254 and 1651 (a), in which compels this court to grant the petitioner access to relief and justice of his constitutional rights.

D. TIMELENESS AND AUTHORITY

Rule 13 of the Supreme Court provides that a petition for a writ of certiorari seeking review of a lower state court that is subject to discretionary review by the state court of last resort is timely when it is filed with the Clerk of Court within 90 days after entry of the order denying discretionary review. (See date of Order) See *Appendix 1a.*

E. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Fifth Amendment to the United States Constitution, which provides, in relevant part, that, "... No person shall be... subject for the same offence to be twice put in jeopardy of life or limb ... deprived of life, liberty, or property, without due process of law;"
2. The Fourteenth Amendment provides, in relevant part: No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.
3. This case involves USC Title 42 Sec. 1983, which provides, in relevant part, that, " Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities securities by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."
4. This case involves USC Title 42 Sec. 1985, which provides, in relevant part, that, "If two or more persons in any State or Territory conspire, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators."
5. This case involves Article III, Section 2, of the U.S Constitution.
6. This case involves USC Amendment VI, which provides, in relevant part, guarantees the right to a lawyer.

F. NATURE OF RELIEF SOUGHT

The United States Constitution gave to every person having a claim upon a State, a right to submit his case to the Court of the nation. However unimportant his claim might be, however little the community might be interested in its decision, the framers of our constitution thought it necessary for the purposes of justice, to provide a tribunal as superior to influence as possible, in which that claim might be decided. Pursuant to *Cohens v. Virginia*, 19 U.S. (6Wheat) 264, 404, 5 L. Ed 257 (1821), which provides, in relevant part, that, the government of the state and its officers are constitutionally required, affirmed by oaths taken to uphold the U.S. Constitution and to serve the Citizens, who are the Sovereign, and not to defraud those Citizens. This case has ruled that State laws in opposition of federal law are void. This case is most notable for the Supreme Court of the United States assertion of its power to review state supreme court decisions in criminal law matters when the defendant claims that their constitutional rights have been violated.

The petitioner seeks all relief deemed necessary and proper based on the facts set forth in this petition. As a matter of particular law, the petitioner seeks **certiorari review** in this Superior decision. The rights conferred on a defendant accused by the Double Jeopardy Clause would be significantly undermined if appellate review of double jeopardy claims were postponed until after conviction

and sentence. The Double Jeopardy Clause protects an individual against more than being subjected to double punishments. It is a guarantee against being twice put to *trial* for the same offense. The Constitution of the United States, in the Fifth Amendment, declares, "nor shall any person be subject [for the same offense] to be twice put in jeopardy of life or limb."

G. STATEMENT OF CASE AND STATEMENT OF FACTS

I. Introduction

On November 06th, 2018, the petitioner/defendant Kevin Tyrell Beach was charged by information of a battery due to an alleged incident that occurred on September 16th, 2018 in Broward County, Florida. On November 15th, 2018, the petitioner/defendant's twin brother Kenneth Rashaun Beach Jr. was served with a summons informing the petitioner/defendant (Kevin Tyrell Beach) that he has been charged with a violation of a Florida Statute. The summons instructed the petitioner/defendant that he must attend court on December 18th, 2018 (*which was later transferred from North Satellite Courthouse to Central Courthouse and arraignment was reset for January 10th, 2019*). Kevin Tyrell Beach, an indigent, layman, and pro se defendant requested for standby counsel to assist him in abundance of caution (*in open court on January 10th, 2019 and on January 31st, 2019-- in case he later decides that he is overwhelmed with the legalities and*

technicalities of his case). Judge Robert Diaz denied the petitioners requests—alleging that it would not be fair to an attorney (basing his opinion: “*they cannot really represent the petitioner and have a license to protect*”). Judge Robert Diaz in the lower county tribunal of the 17th Judicial Circuit in Broward County, Florida—created the impression that he was not concerned about the petitioner’s rights and made a decision to deny the petitioner “standby counsel” in bad faith.

II. Factual and Procedural Background

A trial occurred after a jury was impaneled and sworn in, by Judge Robert Diaz on March 20th, 2019. The indigent petitioner (Kevin Tyrell Beach) was unrepresented by an attorney throughout his trial. During the trial the petitioner (Kevin Tyrell Beach) **invoked his right to an attorney**, after he struggled to present his case in its best presentable fashion and was informed he would not be allowed to impeach a particular witness. During the course of the trial, the petitioner begs for an attorney because he does not know how to proceed. The Assistant State Attorney requested that the lower tribunal, conduct a Faretta Inquiry. The lower tribunal refused to conduct a Faretta Inquiry at that subsequent and crucial stage of the proceeding. The lower tribunal demonstrated his belief that a manifest necessity for a mistrial has not occurred in the presented case. The petitioner once again asserts that he needs representation of an attorney and a

professional eye on his case. The lower tribunal asserted that it wouldn't be fair for an attorney to be appointed in the middle of the petitioner's trial. The lower tribunal seems to be asserting that the petitioner was not entitled to his right to counsel—regardless if the petitioner was in jeopardy or not. The lower tribunal appears to be more concerned about fairness and protection of attorney, over the petitioner's double jeopardy rights. The lower tribunal refused to appoint the petitioner with counsel before declaring a mistrial and failed to present any other alternatives to remedy the prejudice of removing the petitioner's right to attorney (ex. providing counsel, offer a continuance, or removing the jeopardy pursuant to Florida Rules of Criminal Procedure Rule 3.111 b 1). The record reflects that the lower tribunal has demonstrated an incomplete trial. The lower tribunal thereafter attempted to negotiate a plea bargain with the petitioner without an attorney present. The lower tribunal offered an adjudication followed by 20 days in Broward County Jail. The petitioner rejected the offer and asserted he wanted his adjudication to come from a particular tribunal (jury). The petitioner requested to finish the trial with an attorney present so he can properly appeal if necessary. The lower tribunal also denied that request. It appears the lower tribunal attempted to goad the layman petitioner into unintelligently-- consenting to a mistrial outside the presence of an attorney. The lower tribunal presented the defendant a "Hobson Choice" and refused to allow the petitioner to invoke his right to counsel before

declaring a mistrial. The lower tribunal induced a declaration of a mistrial as the ultimate alternative-- to remedy the petitioner's entitlement of his right to an attorney. The lower tribunal erroneously declared a mistrial (*See Appendix 4a*).

The lower tribunal explains why he declared a mistrial. The record doesn't reflect if the petitioner consented to a mistrial intelligently, voluntarily, or conferred with, nor enjoyed his right to an attorney. The record does not reflect the state objecting or meeting the burden of proving a manifest necessity for a mistrial was necessary. The petitioner has not enjoyed his valued right to a particular tribunal. This right was not enjoyed due to the "Bad Faith" conduct of the lower tribunal. The lower tribunal repeatedly denied the petitioner's request for standby counsel. The lower tribunal's own bad faith conduct resulted in a mistrial—simply because the petitioner invoked his right to counsel. The lower tribunal did not legally remove any double jeopardy bar before declaring a mistrial. The petitioner simply invoked his right to an attorney. The lower tribunal has attempted to obtain evidence of consent, by initiating "crucial confrontation", with the petitioner outside the presence of his attorney. The lower tribunal denied the petitioner of his right to an attorney before declaring a mistrial. The lower tribunal removed the petitioner's ability to rely on the effective assistance, and competent advice of an attorney. The State has failed to object to a mistrial, thus losing standing in the case. The lower tribunal failed to conduct a Faretta Inquiry. The lower tribunal

failed to protect the rights of the petitioner before declaring a mistrial. The petitioner's liberty is once again placed in jeopardy. The lower tribunal does not present any legal justification, or any legal consent—which is necessary to remove the double jeopardy prohibition bar, before declaring a mistrial. The lower tribunal has no jurisdiction to exercise over Broward County case number:18002120MM20A.

III. Requests for Relief of Irreparable Harm and Denials of Access to the Courts and Justice (Writ Petitions)

The petitioner filed a 21-page petition for a Writ of Prohibition as well as an 18-page appendix of the petition in the Fourth District Court of Appeals of Florida on January 22nd, 2021. The petitioner's Writ of Prohibition and its appendix included evidence exhibits of the record, in which demonstrated a prima facie of an erroneous declaration of a mistrial (*in the lower tribunal for Broward County case number:18002120MM20A*). The petitioner's Writ of Prohibition and its appendix presented evidence that the lower tribunal is in excess of its jurisdiction. The petitioner Kevin Tyrell Beach sought access to the courts in the Fourth District Court of Appeals. The access sought by the petitioner was to prevent impairment and delay of his legal claims of merit -- requesting redress of his injury of irreparable harm, in which was presented in his petition (Writ of Prohibition). The petitioner's Writ of Prohibition notified the Fourth District Court of Appeals of

Florida that his constitutional rights are being intruded upon, violated, and in need of redress (*via double jeopardy rights*). The lower county tribunal in the 17th Judicial Circuit would be in excess of its jurisdiction—without an issuance of a Writ of Prohibition. On February 16th, 2021, the Fourth District Court of Appeals of Florida entered an order **dismissing** the petitioner's Writ of Prohibition, thus denying the petitioner access to the courts to receive redress, violating the petitioner's constitutional rights, and double jeopardy protection relief. This decision continuously inflicts irreparable harm on the petitioner. The order *suggested* that the petitioner is *required* to get convicted before his rights are invoked and *only* if he files a direct appeal (*See Appendix 3a*). Any other interpretation would be a moot issue-- if the petitioner is acquitted. The Fourth District Court of Appeals of Florida presented order is clearly in contradiction with the constitutions (Florida and United States), as well as cited case authorities. On February 22nd, 2021 the petitioner filed a Motion for Rehearing, Written Opinion, and Certification of Questions of Great Public Importance, in which was erroneously denied by the Fourth District Court of Appeals of Florida on March 18th, 2021 (*See Appendix 2a*). This decision also appears to be made in error. A violation of the petitioner's constitutional rights are sufficient irreparable harm to invoke the Florida Supreme Court's certiorari jurisdiction. On April 07th, 2021 the petitioner filed a Writ of Certiorari in the Florida Supreme Court in an attempt to

have them review the Fourth District Court of Appeals of Florida erroneous decision. The Florida Supreme Court refused to review the case and erroneously treated the petitioner's Writ of Certiorari as a Writ of Mandamus. On May 06th, 2021 the Florida Supreme Court has entered an order dismissing the petitioner's petition and denied all future requests for relief in its jurisdiction (*See Appendix 1a*). The petitioner has exhausted all state remedies. The Florida Supreme Court's decision conflicts with its own state law, prior decisions, constitutional rights, and federal law. Thus, the petitioner is being denied access to the courts and justice. The petitioner is being denied relief and suffers irreparable harm in violation of both his federal and state constitutional rights. The petitioner under these special circumstances presented herein, now seeks relief in the United States Supreme Court. The facts presented herein, are undisputed.

H. SUMMARY OF ARGUMENT

The petitioner contends that his particular case is a clear showing that both his federal and state constitutional rights are in violation, once again erroneously placing him in jeopardy, thus creating irreparable harm, in which cannot be remedied on appeal. The petitioner is clearly being denied access to the courts and access to justice. The petitioner has exhausted all state remedies and now relies on the supreme law of the land for protection of his constitutional rights. The

petitioner contends that he has equity in the cause and contends that when he has invoked his right to counsel during his trial, in which the trial judge and state was prohibited from initiating "crucial confrontation" with the petitioner in absence of an attorney. Once the right to counsel has attached and been asserted, the State and court must of course honor it. This means more than simply, that the State and court cannot prevent the accused from obtaining the assistance of counsel. The Sixth Amendment also imposes on the State and court an affirmative obligation to respect and preserve the accused's choice to seek this assistance. The government has an affirmative obligation not to act in a manner that **circumvents and thereby dilutes the protection afforded by the right to counsel**. The judge and the state were barred from obtaining evidence or consent from the petitioner in absence of appointment of an attorney **before** declaration of a mistrial. The State and the judge was required to demonstrate a manifest injustice or obtain "legal", intelligent consent **after** jeopardy has attached. These actions were required in order to remove the double jeopardy prohibition bar **before** declaring a mistrial. The State and the judge has failed to adequately lay **neither** requirement on the record. Therefore, the State has lost "standing" in the case and the court has lost jurisdiction in the case. The petitioner is prohibited from being "tried twice" pursuant to the United States Constitution based on the facts presented in this case. Without relief from this court the petitioner will essentially be denied access to

the courts for relief and justice, thus continuing irreparable harm and injury upon the petitioner in violation of his constitutional rights. The petitioner clearly has equity in this cause. This courts certiorari review will hopefully provide relief for the petitioner in this cause.

I. REASONS FOR GRANTING THE WRIT

1. Argument and Citations of Law

I adopt all the argument presented in the Appendix exhibits presented herein this writ. As an aid to the decision of cases in which the prohibition of the Double Jeopardy Clause has been invoked, the courts have found it useful to define a point in criminal proceedings at which the constitutional purposes and policies are implicated by resort to the concept of "attachment of jeopardy." See United States v. Jorn, supra, at 480. In the case of a jury trial, jeopardy attaches when a jury is empaneled and sworn. Downum v. United States, 372 U. S. 734 (1963); Illinois v. Somerville, 410 U. S. 458 (1973). The aspects of the double jeopardy guarantee's protections **would be lost** if the **accused were forced** to "run the gauntlet" a **second time before an appeal could be taken**. If the accused is acquitted, or, if convicted, has his conviction ultimately reversed on double jeopardy grounds, he has still been forced to endure a trial that the Double Jeopardy Clause was designed to prohibit. Consequently, if a criminal defendant is to avoid *exposure* to

double jeopardy and thereby enjoy the full protection of the Clause, his double jeopardy challenge must be reviewable **before** that subsequent exposure occurs. Accord, Breed v. Jones, 421 U. S. 519, 529-530 (1975); Serfass v. United States, 420 U. S. 377, 387-388 (1975); Jorn, supra, at 479. Pursuant to Cooper v. Aaron, 358 U.S. 1, 78 S. Ct. 1401 (1958) stated above at items 46 and 47: "No state legislator executive or judicial officer can war against the Constitution without violating his undertaking to support it." Petitioner Kevin Tyrell Beach believes that the facts presented in the record of this instant case are indicative of the Florida courts warring against the constitution in that the Florida Courts have continuously ruled in clear prejudice of petitioners, in opposition of the law and constitutions, thus violating enunciated constitutional rights of petitioners in said constitution. There are simply no further steps that can be taken in the state court to avoid the trial the defendant maintains is barred by the Fifth Amendment's guarantee. The very nature of a double jeopardy claim is such that it is collateral to, and separable from, the principal issue at the accused's impending criminal trial, whether or not the accused is guilty of the offense charged. The rights conferred on a criminal accused by the Double Jeopardy Clause would be significantly undermined if appellate review of double jeopardy claims were postponed until after conviction and sentence. See Abney v. United States, 431 U.S. 651 (1977). The holding of Abney becomes highly relevant; by analogy, if a Member "is to avoid *exposure* to

[being questioned for acts done in either House] and thereby enjoy the full protection of the Clause, his . . . challenge to the indictment must be reviewable before . . . exposure [to trial] occurs." Abney, supra, at 662. Granting certiorari. Exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy. The trial courts decision had involved an important right which would be "lost, irreparably," if review had to await final judgment; hence, to be effective, appellate review in that special, limited setting had to be immediate. Re-prosecution after a mistrial has unnecessarily been declared by the trial court obviously subjects the defendant to the same personal strain and insecurity regardless of the motivation underlying the trial judge's action. Where the judge, acting without the defendant's consent, aborts the proceeding, the defendant has been deprived of his "valued right to have his trial completed by a particular tribunal." See Wade v. Hunter, 336 U. S., at 689. United States v. Jorn, 400 US 470 - Supreme Court 1971. Because jeopardy attaches before the judgment becomes final, the constitutional protection also embraces the defendant's "valued right to have his trial completed by a particular tribunal." The reasons why this "valued right" merits constitutional protection are worthy of repetition. Even if the first trial is not completed, a second prosecution may be grossly unfair. It increases the financial and emotional burden on the accused, prolongs the period in which he is stigmatized by an unresolved accusation of wrongdoing, and may even enhance

the risk that an innocent defendant may be convicted. The danger of such unfairness to the defendant exists whenever a trial is aborted before it is completed. Consequently, as a general rule, the prosecutor is entitled to one, and only one, opportunity to require an accused to stand trial. In view of the importance of the right, and the fact that it is frustrated by any mistrial, the prosecutor must shoulder the burden of justifying the mistrial if he is to avoid the double jeopardy bar. His burden is a heavy one. The prosecutor must demonstrate "manifest necessity" for any mistrial declared. Nevertheless, those words do not describe a standard that can be applied mechanically or without attention to the particular problem confronting the trial judge. The Double Jeopardy Clause does protect a defendant against governmental actions intended to provoke mistrial requests and thereby to subject defendants to the substantial burdens imposed by multiple prosecutions. It bars retrials where 'bad-faith conduct by judge or prosecutor'. Thus, if a trial judge acts irrationally or irresponsibly, See United States v. Jorn, supra; see Illinois v. Somerville, 410 U. S., at 469, Oregon v. Kennedy, 456 U.S. 667 (1982), his action cannot be condoned. The petitioner simply invoked his "right to counsel" a right he is afforded by the state and federal constitution. A right that did not provoke a "manifest injustice" in this particular case nor "open the door" for the judge to initiate crucial confrontation to erroneously obtain illegitimate consent from a defendant in absence of his attorney. The right to the assistance of counsel

guaranteed by the Sixth and Fourteenth Amendments is indispensable to the fair administration of our adversarial system of criminal justice. Embodying "a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself," *Johnson v. Zerbst*, 304 U. S. 458, 462-463 (1938), the right to counsel safeguards the other rights deemed essential for the fair prosecution of a criminal proceeding. Justice Sutherland's oft-quoted explanation in *Powell v. Alabama*, 287 U. S. 45 (1932), bears repetition here:

*"The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every stage of the proceedings against him." Id., at 68-69 (quoted in *Gideon v. Wainwright*, 372 U. S. 335, 344-345 (1963))."*

Once the right to counsel has attached and been asserted, the government must of course honor it. This means more than simply that the government cannot prevent the accused from obtaining the assistance of counsel. The Sixth Amendment also imposes on the government an affirmative obligation to respect and preserve the accused's choice to seek this assistance. The government has an affirmative obligation not to act in a manner that circumvents and thereby dilutes the protection afforded by the right to counsel. Therefore, because the state or

trial court failed to obtain legal consent, demonstrate a manifest injustice, or remove the jeopardy pursuant to rule 3.111 of the Florida Rules of Criminal Procedure, they have failed to remove the double jeopardy bar attached after the jury was sworn in and impaneled.

J. ISSUES PRESENTED (CONFLICTS WITH AUTHORITY CASELAW)

The petitioner demonstrates that the dismissal of his Writ of Certiorari in the Florida Supreme Court goes directly against its own prior ruling. Thus, makes it apparent that a bias is projected unto the petitioner and denies him access to the courts and justice in contradiction of the law -- with no actual law supporting its decision. The Florida Supreme Court has somehow erroneously chosen to treat the petitioner's "Writ of Certiorari" as a "Writ of Mandamus", yet presents no justification into why they erroneously chosen to make that decision. In the State of Florida the Supreme Court in Belair v. Drew 770 So.2d 1164 (2000) clearly demonstrated that the district court in Belair v. Drew, 734 So.2d 1190 (Fla. 5th DCA 1999) certified conflict with Williams v. Spears, 719 So.2d 1236 (Fla. 1st DCA 1998) **which held that certiorari review should be granted where a party's constitutional rights may be abridged by the continuance of the proceedings below and, therefore, such abridgement could not be**

remedied on final appeal.

K. CONCLUSION

An answer to the questions presented herein will have an impact on the public and pro se litigant's that are in need of assistance in Florida courts. The Florida court system and its decisions presented herein this writ, appears that the courts appear to "straddle the fence" on deciding to protect a citizen's constitutional rights. The answer to these questions will provide clear guidance to Florida Courts when it comes to the violation of a citizen's constitutional rights and requires them to commit to a decision that is in compliance with the law, and inescapable through semantics with sovereign state laws and the conflicts with federal law. Florida courts seem to come to different conclusions with laws that mean the same exact thing-- depending on who the litigant is and their status. Certiorari review under these extraordinary circumstances is necessary to redress the petitioner's claims. The present dispute remains a live one. "Article III of the Constitution grants the Judicial Branch authority to adjudicate 'Cases' and 'Controversies.' Generally, "those who invoke the power of a federal court" must "demonstrate standing—a 'personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.' " Id., quoting Allen v. Wright, 468

U.S. 737, 751 (1984). “[A]n actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” Steffel v. Thompson, 415 U.S. 452, 459 n.10 (1974). Younger v. Harris, 401 U. S. 37 (1971), made it clear that irreparable injury must be measured by bad faith harassment, and such a test must be applied to a request for injunctive relief against threatened, as well as pending, state court criminal prosecution; and that it followed from the reasoning of Samuels v. Mackell, 401 U. S. 66,(1971) that the same test of bad faith harassment is a prerequisite for declaratory relief with respect to a threatened prosecution.

Petitioner Kevin Tyrell Beach maintains throughout this petition that his prosecution is barred by the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, there is a live case and controversy. For the foregoing reasons, the petition for a writ of certiorari and all other relief deemed necessary and proper should be granted.